

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID MONROE BELL,
TIMOTHY RAYMOND CULP, JOHN BRYAN DALY
and
MICHAEL HATTERMANN

Application 10/719,203

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on March 27, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

On February 23, 2006, an Order Returning Undocketed Appeal to Examiner was mailed which ordered that the application be returned to the examiner to:

- 1) hold the appeal brief of June 13, 2005 defective;
- 2) request appellants to file a supplemental appeal brief in compliance with 37 CFR § 41.37 or to submit a statement from the examiner regarding the position taken on the missing appendices;
- 3) consider the supplemental appeal brief;
- 4) vacate the examiner's answer and file a revised answer in compliance with the new rules effective September 13, 2004 and in response to the supplemental appeal brief;
- 5) provide clarification of the statement of rejections to claims 1-25; and
- 6) for such further action as may be appropriate.

The examiner and appellants have complied with all of the above except for 4). The Examiner's Answers mailed May 4, 2006 and July 12, 2006 (which appears to be a remailed copy of the May 4, 2006 Answer) fail to comply with the new rules effective September 13, 2004.

Section 1207.02(A) of the Manual of Patent Examining Procedure (MPEP) (Eighth Edition, Rev. 3, Aug. 2005) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

- (1) Real Party in Interest . . .

- (2) Related Appeals and Interferences
- (3) Status of Claims
- (4) Status of Amendments After Final
- (5) Summary of Claimed Subject Matter
- (6) Grounds of Rejection to be Reviewed on Appeal
- (7) Claims Appendix
- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.
- (9) Grounds of Rejection
- (10) Response to Argument
- (11) Related Proceedings Appendix

It is noted that the Examiner's Answer mailed May 4, 2006 is missing the headings "Summary of Claimed Subject Matter"; "Grounds of Rejection to be Reviewed on Appeal"; "Claims Appendix"; "Evidence Relied Upon" and "Related Proceedings Appendix." Correction is required.

In addition, MPEP § 1207.01 states:

On the examiner's answer, below the primary examiner's signature, the word "Conferees:" should be included, followed by the typed or printed names of the other two appeal conference participants. These two appeal conference participants must place their initials next to their name. This will make the record clear that an appeal conference has been held. [Emphasis added.]

The Examiner's Answer mailed May 4, 2006 does not comply with the above requirement because there is only one conferee. Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) for submission of a revised Examiner's Answer in compliance with the headings appearing in MPEP § 1207.02; and
- 2) for taking corrective action regarding the appeals conference, and
- 3) for such further action as may be appropriate.

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